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Dorron Levy

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10/07/2004

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EXAMINER

WACHSMAN, HAL D

ART UNIT

PAPER NUMBER

2857

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/996,789

Applicant(s)

LEVY ET AL.

Examiner

Hal D Wachsman

Art Unit

2857



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on RCE (8-2-04).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 3-16 and 22-35 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 40-52 is/are allowed.
- 6) ☒ Claim(s) 1,2,17-21 and 36-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9-1-04</u> . | 6) <input type="checkbox"/> Other: _____  |

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8-2-04 has been entered.

2. Claims 3-16 and 22-35 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species in which the election was made **without** traverse. However, these withdrawn claims have not yet been cancelled.

*Appropriate correction is required.*

3. Claims 1, 2, 17, 18, 20, 21 and 36-52 are objected to under 37 C.F.R. 1.75(a) for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 1, lines 8-9, cite "said statistical description" however the antecedent basis is "predetermined statistical description". This same type of problem also occurs in claim 39, lines 8-9, claim 40, lines 8-9, claim 41, line 8. Claim 18, line 1, cites "a system" however is this referring to the same system already cited in claim 1 ? This same type of problem also occurs in claim 37. Claim 20, lines 7-8, cite "said disorder indicator behavior" which lacks clear antecedent basis. Claim 38, line 8, cites "said disorder indicator" however the antecedent basis is "measurable indicator. This same type of problem also occurs in claim 38, line 10. Claim 38, line 8, cites "said system" however the antecedent basis is "operative system". This same type of problem also occurs in claim 38, line 9. Claim 38, lines 11-12, cite "said disorder indicator

Art Unit: 2857

behavior" which lacks clear antecedent basis. Claim 39, lines 4 and 5, cite "said system" however the antecedent basis is "external system". The preamble of claim 41 cites "A method for predicting failure in a computing system based on a top down approach..." however the body of the claim makes no reference to the "top down approach". Claim 41, line 5, cites "said system" however the antecedent basis is "computing system". This same type of problem also occurs in claims 42-46, 49, 50 and 52. Claim 45 ends with a semicolon instead of a period. Claim 48, line 2, cites "the measure number" which it appears should be "the measured number". Claim 50, line 3, cites "a messaging signaling units" which it appears should be "a messaging signaling unit". Claim 51, line 2, cites "measuring amount of time" which it appears should be "measuring an amount of time". Claim 52, line 2, cites "said indicator" however the antecedent basis is "disorder indicator". The examiner asks the applicant to better claim the limitations cited above. While the examiner understands the intentions of the applicant he feels confusion could be drawn from the limitations cited above. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 17-21 and 36-39 rejected under 35 U.S.C. 102(b) as being anticipated by Searles et al. (5,991,707).

As per claim 1, Searles et al. (Abstract, col. 3 lines 20-45, col. 31 lines 18-26) disclose "a measurement unit for repeatedly measuring a disorder indicator....represents a non-designated output of ... the non-designated output represents waste of said system" (Note: column 3, lines 22-25, refer to "an environmental parameter such as **temperature**, humidity or **the like** within the system or in the vicinity of the system". Thus, waste heat would be one such environmental parameter here due to its effect on the temperature within the system and/or in the vicinity of the system.) Searles et al. (Abstract, col. 6 lines 52-67, col. 7 lines 1-11, col. 31 lines 32-67, col. 32 lines 17-23) disclose "a comparator for comparing obtained measurements of said disorder indicator with a predetermined statistical description of said disorder indicator...being operable to issue a failure prediction upon determination that such a deviation is statistically significant". Searles et al. (Abstract, col. 2 lines 31-35, 45-51, 60-63, col. 3 lines 40-45) disclose "wherein said disorder indicator provides non-specific failure indications".

As per claim 2, Searles et al. (see at least abstract) disclose the feature of this claim.

As per claim 17, Searles et al. (Abstract, col. 2 lines 60-65, col. 3 lines 3-8, col. 7 lines 6-11, col. 21 lines 56-60, col. 24 lines 9-14, 38-41) disclose the feature of this claim.

As per claim 18, Searles et al. (Abstract, col. 2 lines 31-35, 45-51, 60-63, col. 3 lines 40-45) disclose the feature of this claim.

As per claim 19, Searles et al. (Abstract, col. 3 lines 20-45, col. 31 lines 18-26) disclose "a measurement unit for repeatedly measuring a disorder indicator....represents a non-designated output of ... the non-designated output represents waste of said system". Searles et al. (Abstract, col. 31 lines 23-49) disclose "a statistical unit for building up a statistical description of said disorder indicator...during a training phase of operation of said system". Searles et al. (Abstract, col. 6 lines 52-67, col. 7 lines 1-11, col. 31 lines 32-67, col. 32 lines 17-23) disclose "a system threshold, ...to apply thresholds to said disorder indicator to predict system failure". Searles et al. (Abstract, col. 2 lines 31-35, 45-51, 60-63, col. 3 lines 40-45) disclose "wherein said disorder indicator provides non-specific failure indications".

As per claim 20, Searles et al. (Abstract, col. 3 lines 20-45, col. 31 lines 18-26) disclose the repeatedly measuring a disorder indicator of a system step. Searles et al. (Abstract, col. 6 lines 52-67, col. 7 lines 1-11, col. 31 lines 32-67, col. 32 lines 17-23) disclose both the comparing said disorder indicator and determining from said comparison steps. Searles et al. (Abstract, col. 2 lines 60-65, col. 3 lines 3-8, col. 7 lines 6-11, col. 21 lines 56-60, col. 24 lines 9-14, 38-41) disclose the issuing an alert step. Searles et al. (Abstract, col. 2 lines 31-35, 45-51, 60-63, col. 3 lines 40-45) disclose "wherein said disorder indicator provides non-specific failure indications".

As per claim 21, Searles et al. (see at least abstract) disclose the feature of this claim.

As per claim 36, Searles et al. (Abstract, col. 2 lines 60-65, col. 3 lines 3-8, col. 7 lines 6-11, col. 21 lines 56-60, col. 24 lines 9-14, 38-41) disclose the feature of this claim.

As per claim 37, Searles et al. (Abstract, col. 2 lines 31-35, 45-51, 60-63, col. 3 lines 40-45) disclose the feature of this claim.

As per claim 38, Searles et al. (Abstract, col. 2 lines 31-35, 45-51, 60-63, col. 3 lines 20-45, col. 31 lines 18-26) disclose both the selecting a measurable indicator of a level of disorder and repeatedly measuring said disorder indicator steps. Searles et al. (Abstract, col. 31 lines 23-49) disclose the obtaining a statistical description of behavior step. Searles et al. (Abstract, col. 6 lines 52-67, col. 7 lines 1-11, col. 31 lines 32-67, col. 32 lines 17-23) disclose both the comparing said disorder indicator and determining from said comparison steps. Searles et al. (Abstract, col. 2 lines 60-65, col. 3 lines 3-8, col. 7 lines 6-11, col. 21 lines 56-60, col. 24 lines 9-14, 38-41) disclose the issuing an alert step.


As per claim 39, Searles et al. (Abstract, col. 3 lines 20-45, col. 31 lines 18-26) disclose "a measurement unit for repeatedly measuring a disorder indicator....represents a non-designated output ...and is a byproduct of operation of said system". Searles et al. (Abstract, col. 6 lines 52-67, col. 7 lines 1-11, col. 31 lines 32-67, col. 32 lines 17-23) disclose "a comparator for comparing obtained measurements of said disorder indicator with a predetermined statistical description of said disorder indicator...being operable to issue a failure prediction upon determination that such a deviation is statistically significant".

Art Unit: 2857

6. Claims 40-52 are allowed subject to the appropriate correction of the 37 C.F.R. 1.75(a) objections noted in paragraph 3 above.
7. Applicant's arguments with respect to the claims that are rejected above have been considered but are moot in view of the new ground(s) of rejection.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D Wachsman whose telephone number is 571-272-2225. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Hal D Wachsman  
Primary Examiner  
Art Unit 2857

HW  
October 3, 2004